

MINUTES
REGULAR CITY COUNCIL MEETING
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS, YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
JUNE 16, 2010
5:30 p.m.

CALL TO ORDER

Mayor Krieger called the City Council meeting to order.

INVOCATION/PLEDGE

Tom Reynard, Pastor of Mount Zion Church, gave the invocation. **Councilmember Stuart** led the City Council in the pledge of allegiance.

ROLL CALL

Councilmembers Present:	Stuart, Mendoza, Beeson, McClendon, Brooks-Gurrola, Johnson and Mayor Krieger
Councilmembers Absent:	none
Staffmembers Present:	City Administrator, Greg Wilkinson Director of Community Development, Laurie Lineberry Principal Planner, Jennifer Albers Director of Finance, Pat Wicks City Attorney, Steven W. Moore Various Department Heads or their representative City Clerk, Lynda L. Bushong

FINAL CALL

Mayor Krieger made a final call for the submission of Speaker Request Forms from members of the audience.

PRESENTATIONS

Mayor Krieger thanked Immaculate Conception Catholic Church for donating \$500.00 to City of Yuma swim programs.

I. CALL TO THE PUBLIC

Mike Perry, owner of AA Val-U-Storage, 3900 S. Avenue 3E, expressed his dissatisfaction with the way the closure of Avenue 3E for streets improvements has been handled. He was not contacted by City staff prior to the closure to give him advance notice. The closure has resulted in a 90% reduction in his business, equating to a loss of \$9,450. Although, he has discussed the situation with the City Administrator, he asked the City Council to meet with all the affected businesses to resolve communication and access issues. A representative from staff and the contractor should also be present. Further, the raised medians and extra wide sidewalks planned for the street are unnecessary and too costly. The medians will actually be a hindrance.

Victor Roman, owner of retail building at 2573 E. 24th Street, stated that he is speaking for some 15 businesses located along 24th Street between Pacific Avenue and Avenue 3E that are suffering because of the closure of a Avenue 3E. He agreed with Perry's comments. Part of Avenue 3E is closed even though it is not being worked on; why couldn't traffic be allowed to move north from 24th Street. The closure is hurting all of the businesses; there is no traffic on 24th Street. He asked for signage that would make it clear

to potential customers that they can reach these businesses. Anything the City Council can do will be appreciated.

Jesus Gutierrez, 1600 E. 26th Place, owner of a local hydraulic shop accessed by Avenue 3E, stated that the closure has resulted in a drop of 80% in his sales. The new signs have marginally increased traffic to his shop. Traffic on Avenue 3E is highly industrial and agricultural in nature and raised medians will create problems and limit access. The sidewalks are unnecessary; there are no pedestrians. He asked the City to consider using its advertising capabilities to announce to the community that these businesses are accessible.

Daquel Ochoa, 2589 E. 24th Street, #2, specifically listed 13 businesses that are being adversely impacted along 24th Street. The business owners have spoken with the City Administrator and expect that he will be working with them.

Neomi Schaffer, 2615 E. 24th Street, owner of several office buildings on 24th Street, noted that some of the businesses in his lease space are new and were seeing good sales until the Avenue 3E project closed the road. There have actually been two days where the stores saw no customers and no sales. She asked that the lane constrictions be shortened – occur closer to the businesses – and that road closure signs also be moved closer to the businesses.

Terry Easterday, 3359 S. 15th Avenue, drew attention to 32nd Street. The street continues to deteriorate while a Capital Improvement Program (CIP) project for its improvement has again been delayed. It is unclear to members of the community how CIP projects are prioritized. 32nd Street is a critical corridor between South County and Yuma Valley. It is currently constricting industry critical to the region. Safety is becoming an issue. The history of the project is a patchwork of delays, outlined by Councilmember Johnson at yesterday's worksession. Many people have planned businesses and homes based on 32nd Street being maintained and improved. The City Council should look to its planning procedures. He asked the City Council to reconsider the project's priority and move it forward or explain to the public when it will be done.

Jack Kretzer, 761 W. Queens Place, expressed his interpretation of the Yuma City Charter provisions concerning the City Administrator. The Charter does not provide the City Council the authority to enter into a contract with the City Administrator or the City Attorney. The Charter states the City Administrator serves at the pleasure of the City Council, which has nothing to do with contracts or contract stipulations. The City Council did not appoint a City Administrator on January 3, 2010, which nullifies the appointment of the City Attorney, the City Finance Director and the City Clerk. The Charter can be changed only through a vote of the public, followed by the Governor's approval.

Shereen Khan-Guinn, 560 E. Palo Verde Street, recounted her interactions with Mayor Krieger and John McCain concerning a conspiracy to malign her and her husband, resulting initially from her reporting banking corruption by a local attorney. Since that time, she has suffered from continued law enforcement abuse and efforts to cover up and thwart her accusations. Mayor Krieger presented her with 108 documents, a compilation of material from Yuma County and City law enforcement personnel, per her request; however, they are fraudulent. Mayor Krieger has twice prevented her from speaking at a meeting. She will be answering these documents in writing and the City Council should beware that the public is watching and listening. She made further accusations of misconduct. **Mayor Krieger** answered the allegations, saying the City has provided the Guinns with all the information that is available.

Wilkinson responded:

- New, better signage for the Avenue 3E businesses should be arriving tomorrow to replace the generic business access signs currently in place.
- He met today with 7 of 12 business owners being impacted:
 - The contractor is remiss in not contacting these owners to let them know the closure was coming.
- Although, the City ran several spot ads on television, in the newspaper and on its radio program, these efforts were not enough. The closure will be the subject of tomorrow's radio program and there will be a greater focus on it in the City's media efforts.
- Staff has prepared a plan to alleviate the Avenue 3E problems and will begin its implementation immediately.

II. MOTION CONSENT AGENDA

Discussion on Motion Consent Agenda Item B.4, see below:

Jackie Fisher, 1130 S. 6th Avenue: Although the applicant has a legal right to operate a liquor store at 1111 South 4th Avenue, she objects to it on a moral basis. The location is too close to Brownie's Restaurant, where families congregate. The location has too little parking and is too close to areas where the homeless congregate. Let Brownie's continue to be a safe place. **Mayor Krieger** explained that State law sets forth specific criteria for denying a liquor license. None of those criteria apply to this license. The City is a recommending body only; the license is issued by the State. There will be no consumption of alcohol on the premises.

Brooks-Gurrola asked if parking was sufficient to meet the requirements at this location. **Lineberry** explained that parking will be addressed when the applicant applies for a business license. It appears that there could be an issue, but the review of the liquor license application involves reviewing its proximity to churches and schools and its zoning. This building was constructed some years ago, so the current parking requirements may not be applicable. Staff will also consider safety when reviewing the business license application.

Discussion on Motion Consent Agenda Item B.3, see below:

Beeson asked to see the score sheet for the Stormwater Engineering Consulting Services that was given to Johnson at his request. **Johnson** stated that he has reviewed the score sheet and no longer has any issues with the bid award recommendation.

Motion (Mendoza/Johnson): To adopt the Motion Consent Agenda as recommended. Voice vote: **approved** 6-1; Beeson voting Nay.

A. Approval of minutes of the following City Council meeting:

Regular Worksession

March 16, 2010

B. Approval of Staff Recommendations:

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (Attny)
2. Approve a new #09 Liquor Store Liquor License application submitted by Emad Elia Yousif, agent for 4th Ave. Liquor, 1111 South 4th Avenue, Yuma, Arizona. (LL10-10) (Admin/Clerk)
3. Authorize staff to negotiate and execute a one-year contract with the option to renew for four additional one-year periods, one period at a time, depending on the appropriation of funds and satisfactory performance, for Stormwater Engineering Consulting Services with the following companies:
 1. Osman Engineering PLLC Yuma, Arizona
 2. James Davey and Associates Inc Yuma, Arizona(RFQ #2010000382) (Eng)
4. Award to the lowest responsive/responsible bidder for a Solar Photovoltaic System installed on the roof of City Hall utilizing funds from the American Recovery and Reinvestment Act of 2009 (ARRA) at an estimated cost of \$479,500.00 to Standard Renewable Energy, Phoenix, Arizona. (Bid #2010000396) (Facilities)
5. Authorize Staff to execute a one-year contract on an as-needed basis with the option to renew for four additional one-year periods, one period at a time depending on the appropriation of funds and satisfactory performance, for Sodium Hypochlorite Bleach 12.5% at an estimated annual cost of \$25,000.00 to the lowest responsive/responsible bidder: Hill Brothers Chemical Company Phoenix, Arizona. (Bid #2010000407) (Utilities)
6. Authorize staff to negotiate and execute a one-year contract with the option to renew for four additional one-year periods, one period at a time, for HVAC & Refrigerant Services utilizing funds from the American Recovery and Reinvestment Act of 2009 (ARRA) at an estimated cost of \$248,000.00 with the following firms:

Polar Cooling, LLC	Primary	Yuma, Arizona
Hyatt Refrigeration Inc., dba Hyatt Air Yuma	Secondary	Yuma, Arizona

(Bid #2010000420) (Facilities)
7. Authorize the City Administrator to execute subrecipient agreements in the amount of \$403,791.00 in accordance with the 2010 CDBG Action Plan. (Admin/EcDev)
8. Designation of the Acting City Administrator by the City Administrator, pursuant to the Yuma City Charter, Article VIII, Section 3, during the absence or disability of the City Administrator. (Admin)
9. Accept donation of a 1948 Chrysler Fire Chief Sedan (Fire/Suppression)
10. Authorize waiver of potential conflict of interest with the Arizona Attorney General's Office for review of Executive Session minutes. (Attny)

III. RESOLUTION CONSENT AGENDA

Mayor Kreiger declared a conflict of interest in connection with Resolution R2010-39; he is involved with the contractor of the project; he turned the meeting over to Deputy Mayor Johnson.

Bushong displayed the following title:

Resolution R2010-39

A resolution of the City Council of the City of Yuma, Arizona, authorizing and approving a Development Agreement permitting deferral of Citywide Development fees for Parcel 2, Champion Christian Church Lot Split
(located at 3625 S. Avenue 5E) (Eng/Admin)

Motion (Mendoza/McClendon): To approve the Resolution Consent Agenda as recommended. Roll call vote: **adopted** 6-0-1; Mayor Krieger abstaining due to a conflict of interest as stated above.

Deputy Mayor Johnson returned the meeting to Mayor Krieger.

IV. ADOPTION OF ORDINANCES CONSENT AGENDA

Mendoza declared a conflict of interest in connection with Ordinance O2010-30; his employer owns the property involved.

Bushong displayed the following title:

Ordinance O2010-30

An ordinance of the City Council of the City of Yuma, Arizona, amending Ordinance O2006-60 to delete the requirement of a four foot (4') right-of-way dedication on 1st Avenue and to extend the time for compliance with conditions from two years to four years for the rezoning of certain properties from the High Density Residential/Historic/Bed and Breakfast Overlay (R-3/H/BB) District to Transitional/Historic/Bed and Breakfast Overlay (TR/H/BB) District, and amending the zoning map to conform thereto
(Modifying the conditions for rezoning of properties at 433 and 439 S. 1st Avenue) (CD/Planning)

Motion (Johnson/McClendon): To adopt the Ordinance Consent Agenda as recommended. Roll call vote: **adopted** 6-0-1; Mendoza abstaining due to a conflict of interest, as stated above.

V. INTRODUCTION OF ORDINANCES

Ordinance O2010-34: Ordering of a Special Election concerning extending the 0.2% (two-tenths of one percent) Transaction Privilege Tax dedicated to Public Safety

Speaker:

Jack Kretzer, 761 W. Queens Place, spoke to Ordinance O2010-34: The City currently has bonds in place that the Public Safety Tax is paying off; these bonds are set to expire in 2015. How can the City change the rules when bonds are in place? The City appears to have learned from the State legislature how to take money from other accounts to put into the General Fund since the City has swept Equipment Replacement Funds (ERF) into the General Fund. Contrary to last night's staff presentation, there is no need to hurry the extension of this tax. There is no need to put this on the ballot in November at all. It's only being recommended so that the money can be used for something else. The City is being dishonest in how it uses 2% Hospitality Tax funds, too; they are not being used as prescribed by the voters.

Discussion

Wilkinson: No one on the City Council or working for the City is being dishonest with 2% Hospitality Tax revenues. Dishonesty is not allowed. Every penny put into the ERF is still there and available to the department, which put it into the fund. The Yuma Police Department (YPD) has approximately \$500,000 available to it for vehicles, which is exactly how the money will be spent. The issue with the ERF is that's all it has; the fund is not being replenished.

Johnson stated that the justification for extending the Public Safety Tax given at yesterday's presentation was so that there would be a dedicated funding source for future YPD and Yuma Fire Department (YFD) needs resulting from growth. However, development (impact) fees are specifically collected by the City to offset the costs of growth, including fire and police facilities, vehicles/trucks, and related communication equipment. Even if this tax is extended, it will not be applicable to the replacement of vehicles/trucks. This is a rush to judgment and needs further discussion before being put on the ballot.

Stuart: Impact fees pay for public safety infrastructure needed because of specific developments. Impact fees cannot be used to maintain existing facilities. Last night's presentation was a request by the City's public safety personnel to extend the tax so that they can serve the community with up-to-date equipment. He trusts their judgment; it was apparent the departments are planning long range. A sunset clause hinders adequate long range planning. As for specifics that could be included in a maintenance-of-effort clause, those specifics can be laid out in a future ordinance that would give voters the information they need prior to voting. If this ordinance is not introduced tonight, the City will miss putting the question before voters in this election cycle. The ordinance should be approved as written.

McClendon stated that she cannot support an extension of the tax without the inclusion of a sunset date. Everything needs to have an end so it can be re-evaluated as time passes and things change.

Mayor Krieger: Buildings, vehicles and equipment fail or become obsolete, but good planning doesn't. Public safety is one of the key services provided by a municipality. It would be best to avoid a sunset date. Two-tenths of one percent is a very small amount and will have very little impact on taxpayers while providing the City with the ability to maintain public safety.

Motion (McClendon/Mendoza): To amend Ordinance O2010-34 by adding "through June 30, 2035" after the word "levy" and before the words "the two-tenths of one percent" in the ballot language of Section 1; and, further, to eliminate the word "Charter" in Section 2.

Mendoza noted that he totally agrees with long range planning, but people live pay check to paycheck. For the sake of the audience, he clarified that voting on this motion tonight will not pass the tax extension. The motion only amends the proposal that goes to voters. The ultimate decision will be the voters.

Stuart reminded City Councilmember's that the public safety personnel who presented the proposal to the City Council at yesterday's worksession stated they recognized the community's mood in terms of tax increases, but they felt confident in the wording as written.

Roll call vote on the motion to amend: **adopted** 6-1; Stuart voting Nay.

Motion (McClendon/Mendoza): To introduce Ordinance O2010-34, as amended.

Johnson stated he could not support the ordinance without the inclusion of a maintenance-of-effort clause. Without the clause, the extension will be fatally flawed, given that the intent is to provide more and better funding for equipment. The departments would be relying on this tax alone and would not be supported by the General Fund. He also objected to the last minute nature of staff's approach.

Mendoza: The City of Yuma has one of the best equipped and trained police and fire departments in the State. This tax is intended to enhance and maintain that level of service.

Beeson stated he would be voting nay because the City Council has not been given adequate time to consider the matter.

Bushong displayed the following title:

Ordinance O2010-34, as amended

An ordinance of the City Council of the City of Yuma, Arizona, ordering a Special Election for the qualified electors of the City of Yuma, Arizona, for the purpose of extending and modifying the 0.2% (two-tenths of one percent) Transaction Privilege Tax dedicated to Public Safety (Special Election to be held in conjunction with General Election on November 2, 2010) (City Clerk)

Roll call vote: Motion to give introduction **adopted** 5-2; Beeson and Johnson voting Nay.

Ordinance O2010-32: Zoning Code Reformat

Motion (Beeson/Johnson): To amend Ordinance O2010-32 as follows:

- In the *Zoning Code Reformat (March 2010)*, Section 154.01.07, B(7), definition of the word "decibel": add the phrase "as a measure of sound pressure levels" at the end of the sentence; and,
- In the *Zoning Code Reformat (March 2010)*, Sections 154.01 and 154.14: provide the symbol for the word "decibel" as a lower case "d" followed immediately by an upper case "B", that is, (dB).

Roll call vote on motion to amend: **adopted** 7-0.

Bushong displayed the following titles:

Ordinance O2010-32, as amended

An ordinance of the City Council of the City of Yuma, Arizona, adopting by reference a reformat of the Yuma City Code Chapter 154 titled, "Zoning Code Reformat (March 2010)" and providing penalties for violations thereof

(Declared a public record by R2010-32) (CD/Planning)

Motion (Beeson/Mendoza): To introduce Ordinance O2010-32, as amended. Roll call vote: **adopted** 7-0.

Bushong displayed the following title:

Ordinance O2010-33

An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereinafter described, be acquired by the City of Yuma by gift or purchase for the reason that such property would be of benefit to the City of Yuma, ratifying any actions taken by city staff to acquire, protect and preserve the property or title to the property, and authorizing payment of certain outstanding taxes and costs necessary for the acquisition of said parcel of real property

(Allowing for cleanup of the property located at 2852 S. Kyla Avenue; CIP 5.9512) (Eng/Admin)

VI. PUBLIC HEARINGS

Annexation Area A2010-02: Greengate – Public hearing to consider the annexation of property located at the southeast corner of Avenue 3½ E and 32nd Street. (CD/Planning)

Mayor Krieger opened the public hearing at 7:04 p.m.

Albers presented the following information:

- Annexation has been requested by the property owner, 4E Investments AZ, LLC.
- Annexation area comprised of 43.6 acres of property located at the southeast corner of Avenue 3½ E and 32nd Street, previously used for agricultural purposes.
- Construction of a produce cooling/packing facility is currently underway on the property
- This property is the subject of a Preannexation Development Agreement adopted by the City Council on April 18, 2010.
- Adjacent property
 - West: Industrial uses
 - South: Industrial and Residential uses
 - North: Agriculture
 - East: Storage facility under development
- Pending receipt of petitions signed by the property owners, staff anticipates bringing back the annexation ordinance on July 7, 2010 for introduction.

There being no speakers, **Mayor Krieger** closed the public hearing at 7:05 p.m.

VII. BUDGET PUBLIC HEARING & RELATED ACTIONS

A. Combined Public Hearings: Truth-in-Taxation & Final Budget for Fiscal Year 2009-2010 - pursuant to ARS 42-17107. (Fin)

Mayor Krieger opened the Public Hearings at 7:06 p.m.

Wicks presented the following information:

Property Taxes

- Levied for general purposes
- Much lower reliance on property taxes in Southwest in comparison with East
- Constitutes a more stable revenue base than sales taxes because it is not directly tied to the economy
- Governments tend to levy at or near the maximum allowed amounts because of levy limitations
 - Several years ago, the State Legislature adopted legislation that forced tax levy cuts, which penalized those municipalities that had not levied at the maximum level.
- Yuma has had no secondary tax levy since 1992.
 - The City's property tax is a primary property tax and its revenues are used for operations.
- The amount of an individual's property tax is dependent upon the value of his/her property
 - Assessment made by Yuma County Assessor; generally less than actual market value
 - The Yuma County Assessor sends out notices each January indicating to property owners their assessed values.
- Property Tax Levy Limit
 - Since 1980, ARS Section 42-17051 (based on voter-approved changes to the Arizona Constitution) has prescribed a limit to property taxes levied by community colleges, counties and cities.
 - The limit allows a 2% increase in the maximum levy of the prior year, plus an allocation for growth; it adjusts the maximum rate based on the change in value.
 - The formula applies the new maximum rate against the new year values to establish the maximum levy
 - The maximum levy amount carries forward to the new year's calculation whether levied or not.
- Result of the Formula
 - If the percentage of increase in the current value of last year's property exceeds 2%, the maximum rate decreases.
 - If the percentage of increase is less than 2%, the maximum rate increases
 - The 2010 assessed value of property on the Yuma County rolls in 2009 increased by 2.1%; therefore, the allowable tax rate will drop.

Change in Net Assessed Value

2009 value	2.1% }	\$638,301,193	} 5.2%
Change in 2010 value of property from prior year		\$13,421,983	
New year value of prior year property		\$651,723,176	
New construction		\$33,140,119	
2010 value		\$671,441,312	

Computing the Tax Rate

Last year's maximum levy	9,386,857
2% increase	187,737
Levy plus 2%	9,574,594
2010 value on 2009 property	651,723,176
2010 per \$100	6,517,232
New maximum rate	1.4691
Last year's maximum rate	1.4706

Computing the Tax Levy

2010 Net Assessed value	671,441,312
Per \$100	6,714,413
Times New rate	1,4691
2010 Tax Levy	9,864,144

- Average residential property tax bill: In 2010 - \$206; In 2009 - \$194

The following graph depicts the number of property owners by category that will experience a change in their property taxes and the extent of the difference from last year; a majority of taxpayers will see an increase of less than \$20.

	Commercial	Vacant Land	Residential	Total
Decrease or no change	378	498	3,640	4,516
Increase less than \$5	114	1,194	1,491	2,799
Increase less than \$10	63	859	3,452	4,374
Increase less than \$20	133	466	11,874	12,583
Increase less than \$30	123	108	2,430	2,661
Increase less than \$50	194	244	2,034	1,472
Increase more than \$50	808	190	440	1,438
Total	1,813	3,559	24,471	29,843

2010-2011 Budget

- No change from Preliminary Budget
- Operations/maintenance: \$142,208,389
- Capital Improvements Program: \$87,632,349
- Total: \$229,840,738

Speakers

Sandra Hayes, 759 W. 37th Place, asked three questions:

1. How can the City justify spending \$3 million on the City Administrator's budget, when police officers will not see any overtime next year and have not had a raise in approximately 3 years?
Wilkinson: The City Administrator's budget includes the City Administrator's Office, the City Clerk's Office/Elections, the City Attorney's Office, the Economic Development Division, Facilities Maintenance, Strategic Communications/Public Affairs and the Yuma Crossing National Heritage Area Management division. In recent years, the City Administrator's Office included 9 staffmembers; currently, that division has only one employee, the City Administrator.
2. Please explain the discrepancies between the figures on Schedule D, *Summary by Fund of Other Financing Sources and Interfund Transfers*, and Schedule E, *Summary by Department of Expenditures/Expenses within Each Fund*.

Wicks: This is the first time a member of the public has asked questions of the City based on the budget published in the newspaper. **Mayor Krieger** commended Hayes diligence. In answer to the question, **Wicks** stated that the two schedules present different aspects of the same money. The \$440,200 relates to a Riverfront Development Agreement. It is shown on the financial statement as a part of the General Fund, whereas it is separated out in the budget. The totals of the schedules are consistent.

3. Where is the allocation for the Humane Society?

Mayor Krieger: The allocation is part of the outside agency funding. The City will negotiate a contract with the Humane Society that will come back to the City Council for approval as a separate item.

Phil Clark, 4296 W. County 15th Street, stated that Resolution R2010-38 does more than adopt the budget; it amends the Yuma City Charter, which cannot legally be amended without a vote of the people. The last WHEREAS clauses reiterates the Charter provision that states, in part: "The city council shall have control of all litigation of the city, and may employ other attorneys to take charge of any litigation or to assist the city attorney therein..." [Yuma City Charter, Article VI, Section 3(C)]. However, Section 5 of the resolution states that "the City Attorney is authorized to employ outside legal counsel to take charge of any litigation or to assist the City Attorney." The use of the word "shall" in the Charter provision leaves the City no flexibility. **Clark** referred to a comment made by Johnson in a recent telephone conversation; the gist of the comment was that if this wording is not included in the resolution, the City Council could find itself having to deal directly with simple traffic violations. That point, however, does not rise to the level of justification for amending the Charter without an election.

Jack Kretzer, 761 W. Queens Place, wondered if City Councilmembers are really aware of what the budget says. Revenues from a possible Certificate of Necessity for ambulance services aren't in the budget. The \$440,200 payment is actually a gift that goes to a man in California. Why not spend money on a public access channel for use by members of the public? The City should be honest and live up to "truth-in-taxation." He recommended the City Councilmembers know where the money is coming from and going to. Next year's budget includes \$1.8 million dollars in 2% Hospitality Tax funds allocated to capital improvements. What these capital improvements are hasn't been stated.

Wicks drew attention to the City's budget booklet (*Preliminary Budget, City of Yuma, Arizona, Fiscal Year 2010-2011*), noting that it is available online and in the City Clerk's Office. It was distributed to City Councilmembers and has been the basis for all the information presented during the budget discussions. The booklet lists the following 2% Hospitality Tax funded projects.

1.0003	Pivot Point Retail Village Components – Canal Walk	\$60,000
1.0011	Riverfront Development Master Planning	\$25,000
1.0025	West Wetland Multi-Use Pathway	\$155,000
1.0300	Multi-Modal Reconstruction	\$5,000
1.0403	West Wetlands Mitigation	\$10,000
1.0500	Downtown/I-8 Trailblazing and City ID improvements	\$17,000
1.0702	Reclamation Land Exchange	\$160,000
1.1001	Expansion of Yuma's Multi-Use Pathway System	\$72,000
2.0001	Smucker Park Improvements	\$300,000
2.0505	West Wetlands Improvements	\$100,000
2.0507	Lighting of AWC Soccer Fields	\$800,000
2.1101	West Wetlands Park Build-Out	\$150,000

Motion (Mendoza/Brooks-Gurrola): To close the Combined Public Hearings on the Truth-in-Taxation and Final Budget for FY2009-2010. Voice vote: **adopted** 7-0; the Public Hearings closed at 6:58 p.m.

B. Resolution R2010-38: Final Budget Adoption - Adopt the City of Yuma Budget for Fiscal Year 2010-2011 in the amount of \$229,840,738, which includes a Capital Improvement Program Budget of \$87,632,349, and an Operating Budget of \$142,208,389. (Finance)

Mayor Krieger read the full text of the Charter provision, Yuma City Charter, Article VI, Section 3(C), comparing it to the wording in R2010-38, as follows:

Yuma City Charter, Article VI, Section 3

(c) City attorney. From on and after January 1, 1971, there shall be a city attorney who shall be appointed and his compensation fixed by the city administrator with the approval of the city council. The city attorney shall serve as the chief legal advisor to the city council, the city administrator, and all city departments, offices and agencies. He shall represent the City in all legal proceedings, and shall perform any other duties prescribed by this charter, law or ordinance. The city council shall have control of all litigation of the city, and may employ other attorneys to take charge of any litigation or to assist the city attorney therein, and may provide for the payment for such additional legal services and all proper service or work done on behalf of the city in connection with its legal matters. The city attorney shall serve at the pleasure of the city administrator. (Sp. Election 4.7/70)

Resolution R2010-38

WHEREAS, the Yuma City Charter states that the City Council shall have control of all litigation of the city, and may employ other attorneys to take charge of any litigation or to assist the City attorney therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 5: That the City Attorney is authorized to employ outside legal counsel to take charge of any litigation or to assist the City Attorney.

Mayor Krieger: Is R2010-38 in conflict with the Yuma City Charter? **Moore:** The current method used by the City Attorney's Office in employing outside attorneys has been the common practice since before he became the City Attorney; it probably predates even his predecessor. The Charter provision dates from 1970. There have been some concerns voiced in recent years concerning the need for direct City Council action to authorize the City Attorney in this regard and, therefore, the language in Section 5 has been included in the budget resolution for several years. In 1986, the City Council authorized the City Attorney to settle all litigation claims up to \$25,000. If the Charter provision is taken literally, it would bring every legal action to the City Council, even filings, for approval. Some legal actions have a 20 day deadline and there are times when the City Council would not be meeting within such a 20 days period. The City Attorney's Office would be happy to take whatever change of direction the City Council instructs. Another aspect of this question is that the Charter provision creates a conflict in the City Attorney's duties when there is a conflict between the City Council and City staff. Historically, such a situation has come up with there are differences between the City Administrator and the City Council. The Charter requires that he represent both; however, to do so would be unethical. At such a point in the past, he has declared himself

unable to fulfill this role and the City Council has had to use alternate legal counsel, as needed. Other than this conflict of interest, the City Attorney's Office would be willing to change its operations in the future.

Motion #1 (Johnson/Mayor Krieger): To amend Resolution R2010-38 by deleting Section 5.

Johnson explained his reasons: In the eight years he has been on the City Council, he cannot remember ever voting on whether to litigate in a particular instance or employ outside legal counsel. How can the City Council have "control" without ever voting on these matters? The Charter provision cannot be reconciled with the blanket authority given to the City Attorney's Office in Section 5.

McClendon: The City Council does not need to micromanage the City Attorney. The City Council has always been kept informed on what the City Attorney is doing in each case. The City Attorney has the expertise necessary to know what is needed and the City Council needs to let him manage his office. The City Council shouldn't limit his ability to get the right people as each situation requires.

Mayor Krieger made the following points:

- It is important to following the Charter as it is written.
- Changing the Charter is an option and can be brought about through convening a Charter Review Committee and recommending the change to voters in the future.
- It is clear that the Charter gives the City Attorney the authority to represent the City in all legal proceedings; however, the hiring of outside counsel is set apart.
- This is not a question of whether the City Attorney has the knowledge or skill to do the job.
- Whether past City Councils have abided by this Charter provision is immaterial.
- There are a number of Charter provisions the City Council needs to reconsider.

Johnson: This isn't a matter of micromanaging the City Attorney's Office; it is a matter of not managing it at all. The City Council should develop a policy whereby the City Attorney is given the authority to hire outside counsel up to a certain level of expense.

Moore asked that the motion include deleting certain other text relating to Section 5, that is, the WHEREAS clause referred to above and the last phrase in the title of the resolution: "AND AUTHORIZING EMPLOYMENT OF OUTSIDE LEGAL COUNSEL" Deleting these additional parts of the resolution will completely remove all text relating to the issue.

Motion to amend Motion #1 (Johnson/Mayor Krieger): To amend Motion #1 to include deleting:

"WHEREAS, the Yuma City Charter states that the City Council shall have control of all litigation of the city, and may employ other attorneys to take charge of any litigation or to assist the City attorney therein."

And, in the title:

"AND AUTHORIZING EMPLOYMENT OF OUTSIDE LEGAL COUNSEL"

Mendoza: The City Attorney is empowered through City Council delegation to settle cases under \$25,000. There are different interpretations of this provision; delegating this responsibility is an option. City Councilmembers are part-time employees, and, as such, aren't at City Hall every day. The City Council

doesn't have legal training. Putting legal matters before the City Council would require that each one be posted and approved. The current practice has been in place for some time; perhaps the City can move forward with the item as in the past and reconsider it pending next year's budget resolution.

Stuart: Doesn't Section 5 constitute a blanket authorization to the City Attorney to hire outside legal counsel? **Moore:** Yes. **Stuart:** Delegating this authority to the City Attorney in essence complies with the Charter provision and eliminates the need for the City Council to approve each separate instance. **Moore** stated that is his belief; although, another method could be developed. The impetus for Section 5 was to have direct City Council action authorizing the City Attorney to employ outside counsel.

Mayor Krieger: The error is with the Charter. If, in fact, the authority is delegated, how is the City Council still in control per the Charter? **Stuart:** Does the City Council really want to control or micromanage litigation? The City Council has a process in the Executive Sessions for dealing with litigation.

Roll call vote on the motion to amend Motion #1: **failed** 2-5; Stuart, Mendoza, Beeson, McClendon and Brooks-Gurrola voting Nay.

Roll call vote on Motion #1: **failed** 2-5; Stuart, Mendoza, Beeson, McClendon and Brooks-Gurrola voting Nay.

Beeson declared a conflict of interest on the Communications Division portion of the budget.

Motion #2 (Stuart/Mendoza): To approve the Final Budget for Fiscal Year 2010-2011, for the Strategic Communications Division (Account #1012) in the amount of \$636,180. Roll call vote: **adopted** 6-0-1; Beeson abstaining due to a conflict of interest as stated above.

Motion #3 (Stuart/McClendon): To approve the Final Budget for Fiscal Year 2010-2011, for a total amount of \$229,204,558, which includes a Capital Improvement Program Budget of \$87,632,349 and an Operating Budget of \$141,572,209, with the exception and reduction of the Strategic Communications Division budget (Account 1012) in the amount of \$636,180.

Wicks clarified that the figures are the totals after the Strategic Communication Division's budget is removed.

Johnson stated he would be voting nay because the inclusion of a new solid waste collection fee of \$5 per month is a back-door tax increase. The fee will raise \$234,000 more than is necessary to actually cover costs, which constitutes a 25% profit. He has opposed this fee each time it has been considered in the past. He also objected to the Capital Improvement Program budget that allocates scarce funding to little used roads while ignoring serious deterioration of major arterials, 32nd Street between Avenue A and Avenue B being a prime example. In 1983, the City promised voters to improve and widen the roadway by 1998 and it hasn't happened yet.

Mendoza stated that, although he opposes the solid waste fee, he will not vote against the whole budget; he has made his opinion known in prior discussions.

Mayor Krieger stated that he, too, opposes certain elements in the budget, as presented, but will not vote against it; the City must have a budget.

Bushong displayed the following title:

Resolution R2010-38

A resolution of the City Council of the City of Yuma, Arizona, adopting estimates of proposed expenditures by the City of Yuma for the fiscal year beginning July 1, 2010, and ending June 30, 2011; declaring that such shall constitute the adopted budget of the City of Yuma for such fiscal year; declaring necessity of boards and commissions; and authorizing employment of outside legal counsel (total: \$229,840,738; CIP: \$87,632,349; Operating: \$142,208,389) (Finance/Admin)

Roll call vote: **adopted** 6-1; Johnson voting Nay.

C. Introduction of Ordinance O2010-31: 2010-2011 Primary Property Tax Levy and Mall Maintenance District Property Tax Levy

Bushong displayed the following title:

Ordinance O2010-31

An ordinance of the City Council of the City of Yuma, Arizona, fixing, levying, and assessing primary property taxes upon property within the City of Yuma subject to taxation, each in a certain sum upon each one hundred dollars (\$100) of valuation, sufficient to raise the amount estimated to be required in the annual budget for the Fiscal Year 2010-2011 less the amounts estimated to be received from other sources of revenue and the unencumbered balances from the previous fiscal year, providing a general fund; and fixing, levying, and assessing upon property within the boundaries of the Main Street Mall and Offstreet Parking Maintenance District No. 1 subject to taxation, each in a certain sum upon each one hundred dollars of valuation, sufficient to raise the amount estimated to be required for the operation, maintenance, repair and improvement of the facilities of said district, all for the fiscal year ending June 30, 2011

(Total 2010-2011 tax levy: \$9,864,144; tax rate: \$1.4691) (Finance)

VIII. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

Beeson drew attention to an Open House that he will be attending tomorrow at Gila Vista Junior High School, that will involve taking public input on the F-35 Joint Strike Fighter being based in Yuma.

Mayor Krieger asked that a discussion on the Yuma City Charter be included on a future Special Worksession/Roundtable agenda.

McClendon encouraged the City Council and staff to continue open dialogue with businesses affected by the street construction on Avenue 3E. **Mendoza** agreed, noting that the contractor's representative was present during tonight's discussion.

Mayor Krieger noted that the City Council has a policy in place allowing it to limit public input using a timer. Since becoming Mayor he has not used the timer and he thanked the City Councilmembers for their patience with the public. He encouraged members of the public to be mindful of time and get to the point of their comments as quickly as possible.

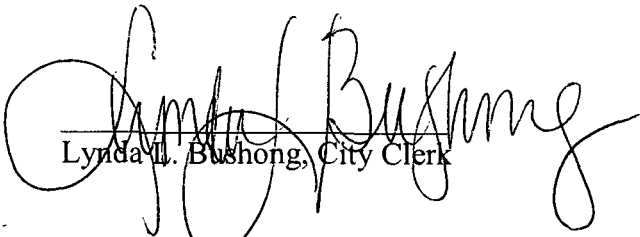
IX. SUMMARY OF CURRENT EVENTS

Wilkinson noted:

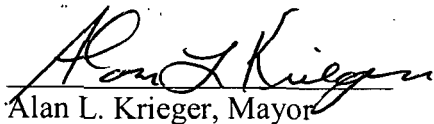
- Members of the public need to attend the F-35 Joint Strike Fighter Open House and express their support/concerns.
- Staff has a list of all those businesses on Avenue 3E that are being impacted by the street construction; staff will continue to work to their benefit.
- The Summer Six Pack program begins tomorrow at the Main Street Historic Theater.

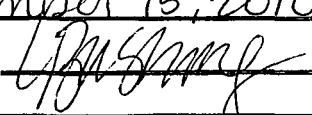
X. EXECUTIVE SESSION/ADJOURNMENT

Mayor Krieger adjourned the meeting at 8:23 p.m. No Executive Session was held.


Lynda L. Bushong, City Clerk

APPROVED:


Alan L. Krieger, Mayor

Approved at the City Council Meeting of:
<u>September 15, 2010</u>
City Clerk: <u></u>